NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

TOM CHURCH,	
Plaintiff and Appellant,	**A098705**
v.	
ZOE PEETOM et al.,	**(San Francisco County**
Defendants and Respondents.	**Super. Ct. No. 987370)**

Plaintiff Tom Church, in propria persona, appeals the dismissal of his action for failing to bring the action to trial within three years after the action was commenced, (Code Civ. Proc.,[1] § 583.420, subd. (a)(2)(A)),[2] and for failing to state a cause of action. Plaintiff contends the dismissal was improper and that the trial court (Judge Girard) was "not supposed to continue to hear the matter" because plaintiff challenged her under section 170.1. We reject these contentions and affirm.

BACKGROUND

In June 1997, plaintiff, in propria persona, filed a complaint against over 100 individuals, entities and organizations alleging personal injury and "civil rights." The

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[1] All undesignated section references are to the Code of Civil Procedure.

[2] Section 583.420, subdivision (a) provides, in relevant part: "The court may not dismiss an action pursuant to this article for delay in prosecution except after one of the following conditions has occurred: [¶] . . . [¶] (2) The action is not brought to trial within the following times: [¶] (A) Three years after the action is commenced against the defendant . . . ."

defendants included numerous police officers, deputy sheriffs, judges from the San Francisco Superior Court, the city attorney's office, the public defender's office, attorneys, and attorney referral service agencies. The complaint alleged no facts against the defendants. Instead, it listed numerous dates and addresses.

In July 1998, plaintiff filed a first amended complaint, which appears to be an unintelligible mixture of diatribe and argument against various defendants, some of whom plaintiff conceded were not served. In January 2000 the Chief Justice of California appointed Judge Girard, a retired Alameda County Superior Court Judge, to preside over the case.

In July 2001, defendants moved to dismiss the action for failure to bring the case to trial during the more than four years that had elapsed since its commencement. They argued that plaintiff had not filed a complaint stating a cause of action, had not responded to demurrers with any viable potential claims, and had done nothing to prosecute the case. Plaintiff filed a rambling, nearly incomprehensible response, in which he states, "Isn't serving papers (a form of) prosecuting one's case? I've had hundreds of people served successfully." Thereafter, plaintiff propounded numerous document demands and form interrogatories.

On January 24, 2002, the trial court granted defendants' motion to dismiss for failure to prosecute and to state a cause of action and, on March 6, entered judgment accordingly. On March 18, plaintiff filed a motion to disqualify "Judge Winslow Christian"[3] from presiding over the instant case under section 170.1. In April 2002, San Francisco Superior Court Presiding Judge Quidachay wrote to plaintiff informing him that his challenge against Judge Girard and Justice Christian was ineffective because the section 170.1 challenge was filed after Judge Girard's judgment was filed.

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[3] Defendants assume that plaintiff was intending to challenge Judge Girard. This appears to be so, since Justice Christian had nothing to do with this action and plaintiff's motion has a different, and presumably former superior court case number interlineated and substituted for the instant case number.

A trial court has discretion to dismiss an action for delay in prosecution. (§ 583.310.) To obtain a discretionary dismissal, the moving party need not show actual prejudice stemming from the delay in prosecution. (*Lopez v. State of California* (1996) 49 Cal.App.4th 1292, 1295.) To avoid a dismissal, the plaintiff must show a reasonable excuse for the delay. If the plaintiff does so, the trial court then considers all pertinent factors before deciding whether to dismiss. (*Wagner v. Rios* (1992) 4 Cal.App.4th 608, 611-612.) If the plaintiff fails to demonstrate excusable delay, the trial court may dismiss the matter. (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443-444.) Merely propounding form interrogatories and document demands does not constitute prosecution of a case where the plaintiff did little else to advance the case during a three-year period. (*Id.* at p. 443.) Appellate review of dismissal for delay in prosecution is limited to the question of whether the trial court abused its discretion in dismissing, resulting in a miscarriage of justice. (*Terzian v. County of Ventura* (1994) 24 Cal.App.4th 78, 83; *Wagner*, at p. 612.)

Here, in addition to a first amended complaint which is indecipherable, plaintiff did nothing to prosecute his action except to propound numerous document demands and form interrogatories *after* defendants filed their motion to dismiss. In addition, plaintiff provides no reasonable excuse for his inaction. His reply brief states: "I don't have to have any '. . . reasonable excuse for . . . delay.' I could if necessary, but what would be the point. I don't believe in making excuses. It's against my religion. A word not in my vocabulary. . . ."

Plaintiff has failed to establish any abuse of discretion in dismissing the action for failure to prosecute.

In addition, plaintiff has failed to demonstrate error regarding Judge Girard's presiding over the motion to dismiss. The record establishes that his motion to disqualify Justice Christian and, presumably, Judge Girard was made after the dismissal judgment was entered.

DISPOSITION

The judgment of dismissal is affirmed.

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SIMONS, J.

We concur.

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STEVENS, Acting P.J.

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GEMELLO, J.